

Filed 7/12/21; certified for publication 8/10/21 (order attached)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

RONALD AUSTIN,

Plaintiff and Appellant,

v.

CITY OF BURBANK,

Defendant and Respondent.

B307677

(Los Angeles County
Super. Ct. No. 19STCP04741)

**ORDER DISMISSING
APPEAL**

After defendant City of Burbank denied plaintiff Ronald Austin's request for information pursuant to the California Public Records Act (Gov. Code, § 6250 et seq.), plaintiff petitioned for a writ of mandate seeking an order compelling defendant's release of records under section 6259. On July 14, 2020, the trial court entered a minute order denying plaintiff's petition, stating that the petition was "denied" and that it was adopting its tentative ruling as its "final ruling." The minute order also directed defendant to prepare a proposed judgment. Plaintiff's counsel waived notice of the court's July 14 ruling. The trial court signed the proposed judgment on July 24, 2020, and notice of entry of judgment was mailed that same day. On August 4, 2020, plaintiff filed a notice of appeal from the July 24, 2020 judgment. Plaintiff did not file a petition for extraordinary writ.

Defendant moved to dismiss the appeal, arguing that the trial court's order may only be challenged by a petition for extraordinary

writ, and that in any event, the notice of appeal was untimely pursuant to Government Code section 6259, subdivision (c).

We have reviewed the parties' briefs, and the League of California Cities' amicus brief on behalf of defendant, and we take judicial notice of over 30 similar petitions filed by plaintiff, who was represented by counsel in the trial court, between October 2019 and August 2020.

We grant the motion to dismiss. The trial court's July 14, 2020 order is not appealable, but may be reviewed only by "petition . . . for the issuance of an extraordinary writ" filed "within 20 days after service upon the party of written notice of entry of the order." (Gov. Code, § 6259, subd. (c).) Because plaintiff waived notice at the July 14, 2020 hearing, the last day to petition this court was August 3, 2020. Plaintiff filed his notice of appeal one day after the deadline to file a writ petition and has not shown any extraordinary circumstances justifying this court treating his appeal as an extraordinary writ. Plaintiff's multiple filings demonstrate familiarity with California Public Records Act litigation. We therefore decline to exercise our discretion to consider plaintiff's appeal as an extraordinary writ. Even if we were to treat the appeal as an extraordinary writ, we would lack jurisdiction to consider it because the notice of appeal was filed one day after the deadline to file a writ petition. (§ 6259, subd. (c); see also *MinCal Consumer Law Group v. Carlsbad Police Department* (2013) 214 Cal.App.4th 259, 263, 265-266 [one-day delay is fatal because time limit for writ review is jurisdictional].) Therefore, the appeal is dismissed.

GRIMES, Acting P. J.

STRATTON, J.

WILEY, J.

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**ORDER CERTIFYING
ORDER OF DISMISSAL
FOR PUBLICATION**

[No change in judgment]

THE COURT:

The order of dismissal in the above-entitled matter filed on July 12, 2021, was not certified for publication in the Official Reports. For good cause, it now appears that the order of dismissal should be published in the Official Reports and it is so ordered.

There is no change in the judgment.

GRIMES, Acting P. J.

STRATTON, J.

WILEY, J.

B307677 – Ronald Austin v. City of Burbank

APPEAL from a judgment of the Los Angeles Superior Court, James C. Chalfant, Judge. Dismissed.

Law Office of Brent J. Borchert and Brent J. Borchert for Plaintiff and Appellant.

Amelia Ann Albano, City Attorney (City of Burbank), Michael M. Lee, and Jill A. Vander, Senior City Attorneys, for Defendant and Respondent.